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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13<sup>TH</sup> DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

**WRIT PETITION No.6448/2019 (EXCISE)**

**BETWEEN:**

HIP BAR PVT. LTD.,  
REP. BY ITS DIRECTOR  
MR. PRASANNA NATARAJAN  
HAVING ITS REGISTERED OFFICE  
AT NO.34, 1<sup>ST</sup> FLOOR,  
B.RAMACHANDRA ADITHANAR ROAD  
(4<sup>TH</sup> MAIN ROAD), GANDHI NAGAR,  
ADYAR, CHENNAI-600020

AND HAVING ITS BRANCH OFFICE  
AT NO.602, 2<sup>ND</sup> FLOOR, 3<sup>RD</sup> B CROSS  
6<sup>TH</sup> MAIN, 2<sup>ND</sup> BLOCK, HRBR  
BANGALORE-560043

... PETITIONER

[SRI P. CHIDAMBARAM, SENIOR COUNSEL;  
SRI DHYAN CHINNAPPA, SENIOR COUNSEL;  
A/W SMT. NIVEDITA C. SHENOY;  
& SMT. ANIRUDH KRISHNAN, ADVOCATES FOR  
SRI NISHANT DEV. B.R., ADVOCATE)

**AND:**

STATE OF KARNATAKA  
THROUGH THE COMMISSIONER  
EXCISE DEPARTMENT  
2<sup>ND</sup> FLOOR, TTMC BUILDING,  
A BLOCK, BMTC, SHANTHINAGAR  
BANGALORE-560027

...RESPONDENT

[SRI UDAY HOLLA, ADVOCATE GENERAL  
A/W SMT. M. JYOTHI, AGA]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THAT THE PETITIONER DOES NOT REQUIRE ANY LICENSE OR PERMISSION TO CONDUCT BUSINESS OF ONLINE ORDER PROCESSING AND DELIVERY OF INDIAN AND FOREIGN LIQUOR INCLUDING BEER, WINE AND LOW ALCOHOLIC BEVERAGES ("LAB") CARRIED OUT BY THE PETITIONER IN THE STATE OF KARNATAKA, ISSUE A WRIT OF CERTIORARI TO CALL FOR THE RECORDS PERTAINING TO THE IMPUGNED LETTER OF THE RESPONDENT DATED 03.11.2018 HAVING REFERENCE NO.ECD/50/REV/GEN/2016-17 (ANNEXURE-AF) AND QUASH THE SAME AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 25.07.2019, IS COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PASSED THE FOLLOWING:

**ORDER**

The petitioner is a Company incorporated under the Companies Act, 2013, said to have been offering a Semi-Closed Prepaid Payment Instrument(Mobile Wallet) to its customers among other services. It is contended that the Reserve Bank of India (RBI) has issued a certificate of Authorization to the petitioner for operation of Semi- Closed Prepaid Payment Instruments (Mobile Wallet) under the Payment and Settlement Systems Act, 2007 ('PSS Act' for short), which is valid till 30<sup>th</sup> September, 2021; licence under the Food & Safety

Standards Act, 2006 ('FSS Act' for short) is said to have been granted to carry on food business. The licence issued by the Government of Karnataka under FSS Act provides to carry on the business of distributor, supplier, transporter, wherein the petitioner is permitted to carry on food business relating to (1) Ready-to-eat savouries; (2) Beverages, excluding dairy products. It is contended that on the request made by the petitioner highlighting the Digital Wallet Technology of the Company exclusively meant for the adult beverages industry, a cashless transaction seeking support for the digital initiative, Letter of Authority dated 01.08.2017 was issued by the respondent for Online Order Processing and Delivery of Indian and Foreign Liquor including Beer, Wine and LAB (Low Alcoholic Beverages) by the petitioner – Hip Bar with certain conditions. It is alleged that pursuant to the coverage against the petitioner executed by a Kannada News TV Channel, the said Letter of Authority was

withdrawn abruptly sans providing an opportunity to show cause. Further, the petitioner was compelled by the respondent to give an affidavit dated 15.11.2018 stating that it has disabled the online delivery of liquor, without prejudice to its rights. Being aggrieved by the aforesaid action of the respondent, petitioner is before this Court seeking for the following reliefs:-

*“i. A Writ of Declaration declaring that the Petitioner does not require any license or permission to conduct business of Online Order processing and Delivery of Indian and Foreign Liquor including Beer, Wine and Low Alcoholic Beverages ("LAB") carried out by the petitioner in the state of Karnataka;*

*ii. A Writ of Certiorari to call for the records pertaining to the impugned letter of the Respondent dated 03.11.2018 having reference No.ECD/50/REV/GEN/2016-17 **(Annexure-AF)** and quash the same; and*

*iii. A Writ of Mandamus directing the Respondent not to interfere with carrying on of the business of Online Order processing and Delivery of Indian and Foreign Liquor including Beer, Wine and LAB carried out by the petitioner in the state of Karnataka, pursuant to the Impugned Letter or any other steps of a similar nature.”*

**CONTENTIONS OF THE PARTIES:**

2. Learned Senior counsel Sri. P. Chidambaram representing the learned counsel for the petitioner has mainly raised three grounds. Firstly, cancellation of Letter of Authority without issuing show-cause notice is against the principles of natural justice and is *void ab initio*. Secondly, no Letter of Authority was required for carrying on the business under the provisions of PSS Act and RBI Regulations. Indeed, no application has been filed by the petitioner for grant of Letter of Authority. Letter of Authority, if any issued has no effect in the eye of law. Thirdly, it was submitted that the action of the respondent - Authority interfering with the business transaction of the petitioner is wholly arbitrary and in breach of the fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India. Neither sale of liquor is totally prohibited nor monopoly is taken by the State in the State of Karnataka.

3. Elaborating the arguments on these points, it was submitted that the petitioner has not violated any provisions of the Karnataka Excise Act, 1965 ('Act, 1965' for short) or the conditions prescribed in the Letter of Authority issued. In terms of Sections 13, 14 and 15 of the Act 1965, licence is necessary for manufacture, possession and sale of liquor. But the petitioner is not engaged in any of these activities. On the other hand, the petitioner is acting as a facilitator for the sale of liquor by the merchant (licensee) to the consumer (purchaser) through the Digital Wallet.

4. Reliance was placed on the following judgments of the Hon'ble Apex Court:-

(i) *Kerala Bar Hotels Association and another vs. State of Kerala and others reported in (2015) 16 SCC 421,*

(ii) *Coffee Board, Karnataka vs. Commissioner of Commercial Taxes, Karnataka reported in (1988) 3 SCC 263;*

*(iii) New India Sugar Mills Ltd., vs. Commissioner of Sales Tax, Bihar reported in 1963 Supp (3) SCR 459.*

5. Learned Advocate General for the State argued that the writ petition is misconceived. No fundamental right is vested with the petitioner to carry on trade / business in liquor, no writ of mandamus can be issued against the petitioner. It is the contention of the State that the transaction of the petitioner is trade / business in liquor. There is no provision under the Act, 1965 for conducting the business on prepaid instruments for alcoholic beverages. According to the State, the petitioner using the mobile application initiates the transaction of purchasing the liquor from CL-2 customer and transports / delivers to the end consumer. In this scenario, it is clear that the petitioner sells the goods-liquor to the end consumer and gets the profit.

6. Reliance is placed on the following judgments;

1. Kerala Bar Hotels Association Vs. State of Kerala and others [2015(16) SCC421]
2. State of Kerala and others Vs. Kandath Distilleries [2013 (6) SCC 573]
3. Dr. Rai Shivendra Bahadur Vs. Governing Body of the Nalanda College, Bihar Sharif and others [AIR 1962 SC 1210]
4. Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Co-operative Housing Society, Jaipur and others [2013(5) SCC 427]

7. Adverting to the aforesaid rival submissions, the following questions arise for consideration of this Court.

- a) Whether the petitioner require any licence or permission to conduct business of online order processing and delivery of liquor to the consumer in the state of Karnataka?
- b) Whether issuing a writ of mandamus to the respondent not to interfere with the petitioner's business relating to liquor is warranted in the circumstances of the case?



8. To answer these questions, it is necessary to analyze the following aspects.

REGULATION OF TRADE OR BUSINESS IN LIQUOR

9. In terms of Article 47, one of the directive principles of State Policy, State has the exclusive right or privilege in respect of potable liquor. It is well settled that State can create a monopoly either in itself or in an agency created by it for manufacture, possession sale and distribution of liquor. If such trade or business is permitted in potable liquor, State regulation is imperative. State of Karnataka is regulating the business in liquor under the Act, 1965 permitting the private parties to deal in liquor business. An effort has been made before this Court, to attack the Regulation of the State on the anvil of Article 14 and 19 of the Constitution in insisting for closure of the Online order processing of the potable liquor whereas liquor to be traded privately. It cannot be held that there is no

intelligible differentia in the classification that has been carved out by the legislature or by the State Policy. Online business of the petitioner relating to potable liquor forms a class by itself and no such discrimination is made by the State amongst the similarly situated class.

10. The fundamental right to carry on the present business claimed by the petitioner on the premise i.e., sale of liquor is not *res extra commercium* and the right under Article 19 (1) (g) of Constitution exists is not absolute but subject to the State permitting to undertake the business. Business of liquor stands on a different footing from other trades, the State possesses the right of control over all aspects of intoxicants. Imposing fetters or restrictions by the State is mandatory though there is no prohibition policy in the State. In such circumstances, a right is vested with the State to monitor, regulate, and prevent from conducting the activities / trade in liquor. Any such restriction

imposed on the petitioner to achieve the laudable object of the Act, 1965 cannot be termed as an infringement of fundamental right guaranteed under Article 19(1) (g) of the Constitution of India.

11. It is apt to refer to the judgment of the Hon'ble Apex Court in the case of Kerala Bar Hotels, supra, wherein it is held thus;

*“ 32. We disagree with the submissions of the respondents that there is no right to trade in liquor because it is res extra commercium. The interpretation of Khoday put forward by Mr. Sundaram is, in our opinion, more acceptable. A right under Article 19 (1) (g) to trade in liquor does exist provided the State permits any person to undertake this business. It is further qualified by Articles 19 (6) and 47. The question, then, is whether the restrictions imposed on the appellants are reasonable.*

*33. We have had the privilege and indeed the pleasure hearing the extremely erudite arguments of a galaxy of Senior Counsel on both propositions on the interpretation of our Constitution and the laws pertaining to the right to carry on trade or business in potable liquor by this Court. In Krishan Kumar Narula, the Constitution Bench was of the opinion that dealing in liquor is a legitimate business, although the State can impose reasonable restrictions. A few years later, however, in Khoday, the concept of res extra*

*commercium* came to be accepted and applied to the business of manufacture and trade in potable liquor. This Court, however, did not place any embargo or constraints on the State to transact this business. History has painstakingly made it abundantly clear that prohibition has not succeeded. Therefore, strict state regulation is imperative. The State of Kerala had in the past forayed into prohibition, but found it to be unimplementable. Thereafter, keeping in mind the heavy consumption of alcohol within the territory, it has experimented with other measures to user temperance if not abstemiousness. So far as this trade is concerned, Article 47 of the Constitution places a responsibility on every State Government to at least contain if not curtail consumption of alcohol. The impugned Policy, therefore, is to be encouraged and is certainly not to be struck down or discouraged by the Courts. How this policy is to be implemented, modified, adapted or restructured is the province of the State Government and not of the Judiciary. The consumption of tobacco as well as liquor is now undeniably deleterious to the health of humankind. Advertising either of these intoxicants has been banned in most parts of the world, the avowed purpose being to insulate persons who may not have partaken of this habit from being seduced to start. Banning public consumption of either of these inebriants cannot be constrained as not being connected in any manner with the effort to control consumption of tobacco, or as we are presently concerned, with alcohol. Vulnerable persons, either because of age or proclivity towards intoxication or as a feature of peer pressure, more often than not, succumb to this temptation. Banning public consumption of alcohol, therefore, in our considered opinion, cannot but be seen as a positive step towards bringing down the consumption of alcohol, or as preparatory to prohibition.

**38.** We now move to the arguments predicated on Article 19 of the Constitution. We have already noted that the business in potable liquor is in the nature of res

*extra commercium and would therefore be subject to more stringent restrictions than any other trade or business. Thus, while the ground of Article 19(1)(g) can be raised, in light of the arguments discussed with regard to Article 14, it cannot be said that the qualification on that right is unreasonable.”*

(emphasis supplied)

Thus, the Hon'ble Apex Court has categorically held that business in potable liquor is in the nature of *res extra commercium* and stringent restrictions are imperative. Hence, the arguments of the learned senior counsel that Articles 14 and 19(1) (g) are infringed by the act of the State is untenable.

TRANSACTION OF PETITIONER WHETHER IS SALE OF LIQUOR:

12. It is the contention of the petitioner that the transaction effected by it is not sale of liquor. The petitioner is claiming to be a mobile wallet platform governed by the payment and settlement systems, engaged in the business of (1) facilitating for business of liquor through the HIP Bar (2) delivery of liquor from the

store to the consumer as an agent, acting on instructions from the end customer. The arguments advanced on behalf of the petitioner that the first part of the petitioner's business is regulated by the RBI under the PSS Act and the RBI has issued the authorization to provide a payment system in respect of liquor in terms of Sections 6 and 7 of the PSS Act cannot be a ground to escape from the restrictions / regulations to which the liquor trade is subjected to, by the State. The learned counsel inviting the attention of the Court to the object of the PSS Act submitted that the said Act was enacted, *inter alia* to empower the RBI to issue directions and guidelines to system providers and regulate the various payment and settlement systems in the country. In terms of Section 2 (1) of the PSS Act, the consumer and merchant are system participants – persons participating in a payment system. The money deposited by the system participants / the consumer into the HIP Bar Mobile Wallet, is not at the disposal of

the petitioner. It is held by the petitioner in an escrow account as required by the provisions of the PSS Act. The role of HIP Bar is merely that of a platform / intermedial / facilitator, the petitioner charges only a transaction service fee for facilitating the payment and / or delivery of the liquor. To substantiate the arguments on this point, reference was made to the judgment of the Hon'ble Apex Court in Coffee Board, supra.

13. In the case of Coffee Board, *supra*, the Hon'ble Apex Court has observed at para No.27 as under;

*27. It was submitted by the learned Additional Solicitor General that these cases, namely, Bhavani Tea Estate (supra) and Vishnu Agencies (supra) would have no application within the set up of the Coffee Act because the provisions of the statute expressly provided that there could be no sale or contract of sale, yet the High Court had for purposes of sales tax assumed (notwithstanding the statutory prohibition) that the transaction contemplated by the statute in the present case, the mandatory delivery, would be a sale. It was submitted that where a statute prohibited a registered owner from selling or contracting to*

sell coffee from any registered estate, there could be no implication of any purchase on the part of the Coffee Board of the coffee delivered pursuant to the mandatory provisions of section 25(1) of the Act. It was urged that Section 17 of the Coffee Act read with Sections 25 and 47 enacts what since 1944 is a total prohibition against the sale of coffee by growers and corresponding purchase of coffee from growers. In view of Section 17 read with Section 25, purchase by the Coffee Board of coffee delivered under Section 25(1) was also impliedly prohibited. It is in view of this express prohibition of sale and corresponding implied prohibition of purchase that the Act provided the only method of disposal of coffee, viz., by the delivery of all coffee to the Coffee Board with no rights attached on such delivery, save and except the statutory right under Section 34. It was also argued that the legislature has made a conscious difference between acquisition of coffee by compulsory delivery by the growers under Section 25(1) of the Act and purchase of coffee by the Board under Section 26(2) and, as such, compulsory delivery of coffee under Section 25(1) cannot constitute a sale transaction as known to law between the growers and the Coffee Board. We are, however, unable to accept the submissions of the learned Additional Solicitor General. **All the four essential elements of sale-(1) parties competent to contract, (2) mutual consent-though minimal, by growing coffee under the conditions imposed by the Act, (3) transfer of property in the goods, and (4) payment of price though deferred,-are present in the transaction in question.** As



*regards the provisions under Section 26(2) empowering the Coffee Board to purchase additional coffee not delivered for inclusion in the surplus pool, it is only a supplementary provision enabling the Coffee Board to have a second avenue of purchase, the first avenue being the right to purchase coffee under the compulsory delivery system formulated under Section 25(1) of the Act. The scheme of the Act is to provide for a single channel for sale of coffee grown in the registered estates. Hence, the Act directs the entire coffee produced except the quantity allotted for internal sale quota, if any, to be sold to the Coffee Board through the modality of compulsory delivery and imposes a corresponding obligation on the Coffee Board to compulsorily purchase the coffee delivered to the pool, except:"*

14. Ordinarily, the essential elements to constitute a sale are i) parties competent to contract ii) mutual consent, iii) transfer of property in the goods from the seller to the buyer, and iv) a price in money paid or promised. As per Section 4 Sale of Goods Act, 1930 where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called as sale.

15. Under the provisions of the Act, 1965 in terms of Section 2 (25), 'sale' or 'selling' includes any transfer otherwise than by way of gift. The statement of objects and reasons to the Act, 1965 reads thus;

*“The existence of different sets of laws in different areas causes considerable administrative and procedural difficulties and also in convenience in the proper implementation of Excise Acts on a uniform basis throughout the State. Therefore, with a view to having a uniform law for the entire New Mysore State, a uniform Excise Bill has been prepared and it replaces the Acts referred to above.”*

**An Act to provide for a uniform excise law in the State of Karnataka.**

*“Whereas, it is expedient to provide for a uniform law relating to the production, manufacture, possession, import, export transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon, in the State of Karnataka, and for certain other matters hereinafter appearing;”*

16. This enactment provides for an uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs. In the present set of facts, the

petitioner is placing orders on the CL-2 licence holders to supply required quantity of liquor on payment basis and in turn sells the same to the person who is an end consumer by receiving the amount which is more than the MRP fixed by the CL-2 licence holder in the pretext of service charges. In terms of Act, 1965 “any” transfer otherwise than by way of gift being ‘sale’, the transaction of the petitioner certainly comes under the term ‘sale’, as such the provisions of the Act, 1965 are applicable.

TRANSPORTATION OF LIQUOR:

17. The State has prescribed the permissible quantity in terms of Rule 21 of the Excise (Possession, Transport, Import and Export) Rules, 1967. The said rule does not provide for delivery/transport of liquor beyond the limits prescribed therein. It is the contention of the petitioner that it does not facilitate delivery / transport of liquor beyond the limits

prescribed in Rule 21 of the Rules, 1967. Section 12 of the Act, 1965 provides for permits relating to transport. A permit under this section may be either a general permit for a definite period and kinds of particular intoxicants or a special permit for specified occasions and particular consignments only. General permits shall be granted only to persons licensed under the Act, 1965 and may cover any quantity of liquor transported at any one time not exceeding the quantity specified in the permit. Such permission shall be issued by the Deputy Commissioner or any other person duly empowered by the State Government in that behalf. Rule 21 deals with the cases where permit or licence is not required. This Rule cannot be construed as the permission granted for the possession or transport of the quantities of the liquors mentioned therein, if such transactions are continuous, frequent, voluminous, multiple and regular. The said rule cannot be made applicable to the business establishments dealing with

the orders in bulk. If the interpretation given by the petitioner to be accepted, in each and every case, where the quantity of liquor requires a permit to possess or transport can easily be divided into small quantities in order to escape the rigor of the Act, 1965 and the Rules which would defeat the purport and object of the Act, 1965. Possessing and transporting of liquor by the petitioner to various end customers is not saved under Rule 21 of the Rules, 1967.

REVOCAION OF LOA:

18. It was argued that the LOA was revoked pursuant to a Tele-news report; indeed, LOA was not only issued by the respondent, but was also renewed. Based on the said LOA, the petitioner has invested huge amounts in developing the technology solutions for the activities contemplated under the LOA and operated its mobile wallet for over a year but the respondent abruptly revoked the LOA. The reasons assigned by the

respondent for revocation of the LOA are unrelated to the Excise Act / Rules or the conditions laid down in the LOA. Hence, the revocation of LOA is arbitrary and unreasonable. These arguments are not acceptable for the reason that the issue of letter of Authority itself was against the provisions of the Act, 1965. On trial and experimental basis, LOA was issued which was not in conformity with the provisions of the Act. On realizing the mistake, the same has been withdrawn at its own discretion in the interest of the stake holders and the public at large. Any LOA issued by the respondent without jurisdiction is *non est* in the eye of law. Source of power to issue LOA is not traceable to any of the provisions under the Act, 1965.

STANDARD OF MORALITY:

19. The petitioner placing reliance on the case of ***Krishna Kumar Narola Vs. Jammu Kashmir*** reported in AIR 1967 SC 1368 submitted that standards

of morality can afford a guidance to impose restrictions, but cannot limit the scope of the right. There is no quarrel on this legal proposition. Indisputably, liquor is deleterious to the health of mankind. The social stigma attached to it as far as the family and the society is concerned cannot be lost sight of. Younger generation including the children below the permissible age succumbing to this temptation of liquor consumption may not be stringently regulated through online orders. The eligibility of the age and sound mind to receive and consume liquor is difficult to monitor with the trade carried out by the petitioner.

20. There are various types of licences one needs to have to store/manufacture/sell/possess/transport. Hence, it is illegal if any sale or purchase is made through any other mode than prescribed under the Act, 1965 in Karnataka. It is only the licence holders who are entitled to sell the liquor. There is prescribed timings

permitted for sale of liquor but the petitioner may engage in 24x7 delivery through online. E-commerce trade with other goods can not be compared with the sale of liquor through online. Under the Act, 1965 and Rules, no online sale is permitted. As such, any transaction of liquor through online made by the petitioner in contravention of the provisions of the Act and Rules is illegal.

WRIT OF MANDAMUS:

21. It is settled law that writ of mandamus cannot be granted unless the existing legal right of an applicant or an existing duty of the respondent has been established. The writ cannot be issued to create or establish a legal right, but to enforce that stood already established. The petitioner is neither a licensee under the provisions of the Act, 1965 to carry on trade in liquor nor has a legal right under the statute to enforce its performance. Unless the legal right is established,



corresponding legal duty imposed under the statute cannot be invoked. No prohibition for liquor in the State would not mean absolute liberty to deal in liquor trade. The business model of the petitioner cannot be held that it does not require authorization under any of the provisions of the Act, 1965. The petitioner taking shelter under the PSS Act cannot give a go-bye to the provisions of the Act, 1965. Indeed, the Act, 1965 do not permit home delivery of alcohol either for oneself or as an agent of another. Hence, no writ of mandamus can be issued as prayed.

22. At this juncture, it is beneficial to refer to the judgment of *Kandath Distilleries, supra*. The relevant paragraphs are extracted hereunder for ready reference;

*“30. The Legislature when confers a discretionary power on an authority, it has to be exercised by it in its discretion, the decision ought to be that of the authority concerned and not that of the Court. Court would not interfere with or probe into the merits of the decision made by an authority in exercise of its discretion. Court cannot impede the exercise of discretion of an authority acting under the Statute by issuance of a Writ of Mandamus. A Writ of*

*Mandamus can be issued in favour of an applicant who establishes a legal right in himself and is issued against an authority which has a legal duty to perform, but has failed and/or neglected to do so, but such a legal duty should emanate either in discharge of the public duty or operation of law. We have found that there is no legal duty cast on the Commissioner or the State Government exercising powers under Section 14 of the Act read with Rule 4 of the 1975 Rules to grant the licence applied for. The High Court, in our view, cannot direct the State Government to part with its exclusive privilege. At best, it can direct consideration of an application for licence. If the High Court feels, in spite of its direction, the application has not been properly considered or arbitrarily rejected, the High Court is not powerless to deal with such a situation that does not mean that the High Court can bend or break the law. Granting liquor licence is not like granting licence to drive a cab or parking a vehicle or issuing a municipal licence to set up a grocery or a fruit shop. Before issuing a writ of mandamus, the High Court should have, at the back of its mind, the legislative scheme, its object and purpose, the subject matter, the evil sought to be remedied, State's exclusive privilege etc. and not to be carried away by the idiosyncrasies or the ipse dixit of an officer who authored the order challenged. Majesty of law is to be upheld not by bending or breaking the law but by strengthening the law."*

23. In the case of Dr. Rai Shivendra, supra, the

Hon'ble Apex Court has held thus;

*"5. A great deal of controversy was raised before us as to whether the Statutes framed by the University under Section 20 of the University of Bihar Act have or have not the force of law and*

*whether a writ under Article 226 of the Constitution has a legal right to the performance of a legal duty by the respondents. In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes to enforce its performance. It is, however, wholly unnecessary to go into or decide this question or to decide whether the Statutes impose on the Governing Body of the College a duty which can be enforced by a writ of mandamus because assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by mandamus. According to the Statutes all appointment of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. Our attention has not been drawn to any article in the Statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to Court and ask for a writ to issue. It is therefore not necessary to go into any other question.”*

24. The Hon’ble Apex Court in Rajasthan State, supra, has observed thus;

*“24. The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice, (ex debito justiceiae) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing*

legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or establish a legal right but, to enforce one that stood already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be

*necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.”*

CONCLUSION:

25. In the light of the aforesaid judgments, it is clear that no writ of mandamus can be granted in the circumstances of the case. The petitioner is not entitled to carry on business of online order processing and delivery of liquor to the consumers in the State of Karnataka in the absence of enabling provision available under the Karnataka Excise Act, 1965 to grant such licence or permission.

For the foregoing reasons, both the questions framed are answered against the petitioner.

In the result, writ petition is dismissed. No order as to costs.

**Sd/-  
JUDGE**

Srt/BL